

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

**CHRISTUS ST. VINCENT REGIONAL
MEDICAL CENTER**

Employer

and

Case 28-UC-245

**DISTRICT 1199NM, NATIONAL UNION OF
HOSPITAL AND HEALTHCARE EMPLOYEES
AFSCME, AFL-CIO**

Petitioner

DECISION AND ORDER CLARIFYING BARGAINING UNIT

District 1199NM, National Union of Hospital and Healthcare Employees AFSCME, AFL-CIO (the Petitioner),¹ seeks to clarify its contractual bargaining unit of technical employees (the Unit) employed by Christus St. Vincent Regional Medical Center (the Employer) by adding the three additional job classifications of paramedic, cardiac sonographer, and vascular technologist to the Unit. The Employer opposes the inclusion of the employees in these job classifications in the Unit, because the petition was filed during the term of the parties' collective-bargaining agreement and there exist no changed circumstances that would warrant clarification of the agreed-upon unit. For the reasons more fully set forth in this decision, I shall clarify the Unit to include the job classifications of paramedic, cardiac sonographer, and vascular technologist (registered and unregistered), because these employees are technical employees in an acute health care facility appropriately included in the Unit under the Board's Rules for Collective-Bargaining Units in the Health Care Industry, 54 Red. Reg. 16336 (Apr. 21, 1989), reprinted at 284 NLRB 1580, and because they share an overwhelming community of interest with the Employer's other technical employees, all of whom are included in the Unit. In clarifying the Unit, I reject the Employer's contention that the processing of this petition would violate the Board's rules regarding the filing of a unit clarification petition during the term of a contract, because, absent clarification, these employees would be denied access to representation as part of any unit. I find no good policy reason, under the unique circumstances presented by this case, to deprive the employees in these three classifications the benefits of collective bargaining at this time and, therefore, will

¹ At the time of certification, District 1199NM, NUHHCE AFL-CIO was apparently not affiliated with AFSCME. Thus, the name of the certified Union does not comport with that of the Petitioner. However, the current collective-bargaining agreement between the parties recognizes the Petitioner as the exclusive collective-bargaining representative of the technical employees at issue here.

clarify the Unit. Additionally, for the reasons described below, I find that the paramedic position is properly accreted into the Unit, because it is a newly-created position.

DECISION

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended (the Act), a hearing was held before a hearing officer of the National Labor Relations Board (the Board). Upon the entire record in this proceeding, I find:

1. **Hearing and Procedures:** The Hearing Officer's rulings made at hearing are free from prejudicial error and are affirmed.

2. **Jurisdiction:** The parties stipulated, and I find, that the Employer is a New Mexico nonprofit corporation with an office and place of business in Santa Fe, New Mexico, where it is engaged in the operation of a general acute care hospital. During the 12-month period ending August 13, 2009, the Employer, in conducting the business operations described above, derived gross revenues in excess of \$250,000 and purchased and received goods valued in excess of \$50,000 directly from points outside the State of New Mexico. Accordingly, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and, further, that the Employer is a health care institution within the meaning of Section 2(14) of the Act, and, therefore, asserting jurisdiction over the Employer in this matter will accomplish the purposes of the Act.

3. **Labor Organization Status:** The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and represents certain employees of the Employer.

4. **Statutory Question:** The Petitioner represents certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain other employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. By its petition, the Petitioner seeks to add to the parties' existing Unit three job classifications of employees employed by the Employer, namely, paramedic, cardiac sonographer, and vascular technologist (registered and unregistered). The proposed addition would add approximately 17 employees to the Unit.

In this decision, I shall discuss the record facts concerning the Employer's operations; the bargaining unit at issue; and the facts that establish a community of interest between the Unit and the paramedic, cardiac sonographer, and vascular technologist (registered and unregistered) positions. I will then discuss the Board's rules relating to clarification petitions and units in the acute health care industry, and apply the record facts to the Board's applicable case law.

A. The Employer's Operations

The Employer, Christus St. Vincent Regional Medical Center, located in Santa Fe, New Mexico, is an acute care hospital, consisting of three floors, with approximately

240 patient beds, and approximately 2,000 employees. It provides, among other services, emergency, radiology, cancer treatment, nursing, intensive care, critical care, neurological, surgical, and orthopedic services. The first floor of the hospital consists of a general entrance, cafeteria, and various patient care areas. The second floor consists of various nursing units, the radiology department, and the emergency department. The third floor consists mostly of nursing units and offices. The hospital is run by a Chief Executive Officer, under whom are several vice presidents who oversee various units, including corporate compliance, marketing and public relations, operations, human resources, medicine, nursing, finance, regional information, mission and spirituality, and philanthropy.

B. The Bargaining Unit

Since January 1989, the Petitioner has represented a unit of the Employer's technical employees, which Unit is the subject of this clarification proceeding. This Unit was originally certified after an election on January 27, 1989, in Case 28-RC-4642, and consisted of the following employees:

All respiratory therapists, x-ray technicians, radiation therapists, EKG technicians, EEG technicians, and Polysom technicians; excluding all other employees, all professional employees, casual employees, guards, watchmen and supervisors as defined in the Act.

In the years following this certification, the parties agreed to expand the Unit. In 1990, the parties agreed to include the ultrasound employees in the Unit. By 1996, the parties had agreed to include six additional technical job classifications in the Unit. By 2003, the parties had agreed to expand the Unit to include a total of 24 classifications of technical employees. These classifications, enumerated in Article 28 of the parties' current collective-bargaining agreement, are as follows: catheterization laboratory technician (certified); catheterization laboratory technician (non-certified); certified respiratory care technician I-III; CT technician; electroencephalography (EEG) technician (registered); EEG technician (non-registered); electrocardiography (EKG) technician I and II; magnetic resonance imaging (MRI) technician; nuclear medicine technician; pulmonary rehabilitation therapist; pulmonary laboratory technician CRT; pulmonary laboratory therapist RT; radiation technologist; polysomnography technician; respiratory educator/RT; respiratory educator/CRT; respiratory therapist I-III; ultrasound technician; and x-ray technician (XRT)-diag. The current agreement became effective on July 1, 2008, and expires on June 30, 2011, and covers a unit consisting of approximately 93 employees.

The Director of Radiology oversees most of the radiology staff, including x-ray and EKG technicians. The Director of Laboratory/Respiratory Services oversees the remainder of the radiology staff, including EEG and polysomnography technicians. There is also a manager over Respiratory Services who oversees the various respiratory technicians and reports to the Director of Laboratory/Respiratory Services. The Director of the Cancer Center oversees the radiation technicians, who are not a part of the radiology department.

The following is a brief summary of the job duties of each Unit position, and a description of any specialized training or certifications required for each position:

1. Catheterization Laboratory Technician (certified). This position is responsible for performing diagnostic and interventional procedures as requested by a physician and for providing patient care while obtaining diagnostic quality images. To be qualified for this position, an employee must have graduated from an accredited radiologic technology program, be licensed by the American Registry of Radiologic Technologists (ARRT) and the State of New Mexico, and possess Basic Life Support (BLS) and Advanced Cardiac Life Support (ACLS) certifications.
2. Catheterization Laboratory Technician (uncertified). This position is the same as the Catheterization Lab Tech (certified), except that there is no ARRT licensure requirement.
3. Certified Respiratory Technician I-III. This position is responsible for assessing, administering, monitoring, and providing therapy to respiratory patients. To be qualified for this position, an employee must have completed a Committee on Accreditation of Respiratory Care (CoARC) accredited respiratory care program and possess a New Mexico Respiratory Care Practitioner license, National Board for Respiratory Care (NBRC) CRT credential, and BLS and ACLS certifications.
4. CT Technician. This position is responsible for performing computed tomographic procedures. To be qualified for this position, an employee must have graduated from an accredited radiologic technology program and possess ARRT certification and a New Mexico license for CT scanning.
5. Electroencephalography (EEG) Technician (registered). This position is responsible for performing complex electroencephalography procedures. To be qualified for this position, an employee must have five years of electroencephalography experience and be certified by either the Board of Registered EEG Technologists or the American Board of Certified and Registered EEG Technologists.
6. Electroencephalography (EEG) Technician (non-registered). This position is responsible for performing routine electroencephalography procedures and requires three years of electroencephalography experience.
7. Electrocardiography (EKG) I and II. These positions are responsible for performing diagnostic electrocardiograms. The EKG II position requires advanced education in dysrhythmia identification and one year experience performing electrocardiograms.
8. MRI Technician. This position is responsible for performing magnetic resonance imaging procedures. To be qualified for this position, an employee must have graduated from an accredited radiologic technology program, possess a State of New Mexico license, and ARRT certification.

9. Nuclear Medicine Technician. This position is responsible for performing clinical diagnostic nuclear medicine testing. To be qualified for this position, an employee must have graduated from an accredited radiologic technology or nuclear medicine program and possess a New Mexico nuclear medicine license and an ARRT or a Nuclear Medicine Technology Board certification.

10. Pulmonary Rehabilitation Therapist. This position is responsible for coordinating the Employer's pulmonary rehabilitation program and providing care to pulmonary and cardiac patients. To be qualified for this position, the employee must have completed a CoARC accredited respiratory care program and possess an Associates degree, a credential from the National Board of Respiratory Care, a New Mexico Respiratory Care Practitioner license, and BLS and ACLS certifications.

11. Pulmonary Laboratory Technician CRT and RT. These positions are generally responsible for the day-to-day operation of the Pulmonary Lab, including the execution, documentation, and reporting of the results of pulmonary function, pulmonary stress testing and bronchoscopy procedures. To be qualified for these positions, an employee must have completed a CoARC respiratory care program for registered respiratory therapists and possess a New Mexico Respiratory Care license and National Board for Respiratory Care RRT credential.

12. Radiation Technologist. This position is responsible for performing radiographic procedures and providing patient care during those procedures. To be qualified for this position, an employee must have graduated from an accredited radiologic technology program and possess ARRT and New Mexico licenses.

13. Polysomnography Technician. This position is responsible for performing polysomnograms/multiple sleep latency tests. To be qualified for this position, an employee must have one year experience in clinical or research laboratory human polysomnography and possess CPR certification.

14. Respiratory Educator/RT, Respiratory Educator/CRT, and Respiratory Therapist. These positions are responsible for administering and monitoring all respiratory care procedures. To be qualified for these positions, an employee must have completed a CoARC accredited respiratory care program and possess a Registered Respiratory Therapist and a Certified Respiratory Technician certification, a New Mexico Respiratory Care license, and NBRC and BLS credentials.

15. Ultrasound Technician. This position is responsible for performing ultrasound procedures. To be qualified for this position, an employee must possess an American Registry of Diagnostic Medical Sonographers certification.²

² The record does not appear to contain a description of the duties performed by a XRT-diag or the qualifications for such position.

The pay ranges for each of these positions is as follows:

Position	Minimum	Midpoint	Maximum
Catheterization Laboratory Technician (certified)	25.94	33.72	41.50
Catheterization Laboratory Technician (uncertified)	22.72	29.54	36.35
Certified Respiratory Technician I	16.65	21.65	26.64
Certified Respiratory Technician II	17.65	22.95	28.24
Certified Respiratory Technician III	19.65	25.55	31.44
CT Technician	24.09	31.32	38.54
EEG Technician (registered)	19.32	25.12	30.91
EEG Technician (non-registered)	17.07	22.19	27.31
EKG I	12.08	15.70	19.33
EKG II	13.27	17.25	21.23
MRI Technician	26.29	34.18	42.06
Nuclear Medicine Technician	26.42	34.35	42.27
Pulmonary Rehabilitation Therapist	21.56	28.03	34.50
Pulmonary Laboratory Technician CRT	18.15	23.60	29.04
Pulmonary Laboratory Therapist RT	21.56	28.03	34.50
Radiation Technologist	29.28	38.06	46.85
Polysomnography Technician	23.22	30.19	37.15
Respiratory Educator/RT	23.56	30.63	37.70
Respiratory Educator/CRT	20.15	26.20	32.24
Respiratory Therapist I	20.06	26.08	32.10
Respiratory Therapist II	21.06	27.38	33.70
Respiratory Therapist III	23.06	29.98	36.90
Ultrasound Technician	27.05	35.17	43.28
XRT-Diag	19.79	25.73	31.68

Each job classification also employs “per diem” employees, who are used on an “as-needed” basis. Per diem employees are paid 15% more than the regular employees in the same classifications, but do not receive benefits or have guaranteed hours.

C. The Classifications Sought by Petitioner

The record reflects that the Employer created the vascular technologist position in February 1998, and the cardiac sonographer position in July 2004. Although the paramedic position was created in April 2008, the first paramedic was not hired until on or about May 12, 2008.

The vascular technologist is responsible for performing outpatient and inpatient exams, including upper and lower extremity venous evaluations, carotid artery examinations, upper and lower extremity arterial evaluations, transcranial doppler studies, and photoplethysmography studies. To be qualified for this position, an employee must have completed an accredited program in vascular or ultrasound technology. A registered vascular technologist must also hold an American Registry of Diagnostic Medical Sonographers (ARDMS) certification. The minimum rate of pay for a vascular technician is \$23.92, the

midpoint is \$29.30, and the maximum rate of pay is \$34.69. The minimum rate of pay for a registered vascular technician is \$27.69, the midpoint is \$33.92, and the maximum rate of pay is \$46.17.

The cardiac sonographer is responsible for performing diagnostic echocardiograms. To be qualified for this position, an employee must have completed a two year allied health education program and possess ARDMS or comparable national certification. The minimum rate of pay for a cardiac sonographer is \$26.37, the midpoint is \$32.30, and the maximum rate of pay is \$38.23.

The paramedic is responsible for performing patient care functions, including inserting and removing intravenous therapy lines, collecting blood, treating wounds, applying splints, casts, and traction devices, performing bedside testing, and operating patient monitoring systems. To be qualified for this position, an employee must have completed trade or vocational school courses in medical/surgical patient care and possess a New Mexico EMT license and BLS and ACLS certifications. The minimum rate of pay for a paramedic is \$13.98, the midpoint is \$17.13, and the maximum rate of pay is \$20.28.

In addition to overseeing the radiology staff, including the x-ray technicians and EKG technicians, the Director of Radiology oversees the vascular technologists and the cardiac sonographers. The paramedics report directly to the Clinical Manager over the Emergency Department, who reports to the Director of the Emergency Department.

As is the case with Unit employees, the Employer employs per diem employees in each of these classifications to work on an as needed basis. They are also paid 15% more than the regular employees in the same classifications, but do not receive benefits or have guaranteed hours.

All full-time and part-time regular employees receive the same health insurance, combined leave, holiday pay, and retirement plan benefits.

**D. The Positions at Issue are Appropriately Included
in a Single Technical Unit**

**1. The Board's Special Rules Regarding Acute
Health Care Facilities**

In 1974, the Act was amended to extend coverage to nonprofit hospitals, which previously had been excluded from the statutory definition of "employer." The legislative history relating to the 1974 amendments reflects Congress' desire for the Board to guard against the proliferation of bargaining units in the health care field, because unit fragmentation in health care institutions could lead to jurisdictional disputes, work stoppages, a higher cost for medical care, and otherwise adversely affect patient care. S. Rep. No. 93-766, 93rd Cong., 2nd Sess. 5 (1974), and H.R. Rep. No. 93-1051, 93rd Cong., 2nd Sess. 7 (1974). Initially, the Board tried to address this congressional concern through a case-by-case approach to unit determinations. This approach, however, proved difficult. As a result, in

1987, the Board issued proposed rules establishing eight presumptively appropriate units for acute health care facilities. In doing so, the Board acknowledged that “that the 1974 amendments were intended to encourage collective bargaining by hospital employees in order to improve wages, working conditions, and morale among those employees, reduce turnover, and improve the quality of care.” 52 Fed. Reg. 25142 (July 2, 1987), reprinted at 284 NLRB 1516, 1522. Accordingly, the rules were drafted “with the intent of affording health care employees the ‘fullest freedom’ to organize, while at the same time attempting to avoid the proliferation of bargaining units in that industry that so concerned Congress.” *Id.*

On April 29, 1989, the Board issued its final rule in which it established eight presumptively appropriate bargaining units for acute care hospital employees: (1) physicians; (2) registered nurses; (3) other professionals; (4) technical employees; (5) skilled maintenance employees; (6) business office clericals; (7) guards; and (8) other nonprofessionals. 54 Fed. Reg. 16336 (Apr. 21, 1989), reprinted at 284 NLRB 1580. The Board instructed that these eight units were the only appropriate units for collective bargaining, absent “extraordinary circumstances,” in which case the Board would determine appropriate units by adjudication. 53 Fed. Reg. 33900 (Sept. 1, 1998), reprinted at 284 NLRB 1528, 1561-62. According to the Rule, extraordinary circumstances are narrowly defined, and normally do not include the arguments raised in the course of the rulemaking proceedings. The Rule also instructs that a party urging extraordinary circumstances bears a “heavy burden” to show that its arguments are substantially different from those which have been carefully considered in the rulemaking proceedings as, for instance, that there are such unusual and unforeseen deviations from the range of circumstances already considered that it would be “unjust” or “abuse of discretion” for the Board to apply the Rule to the facility involved. *Id.*

On April 23, 1991, the United States Supreme Court, in *American Hosp. Ass’n v. NLRB*, 499 US 606 (1991), upheld the validity of the Rule, finding that the Board’s broad rulemaking process under Section 6 of the Act authorized the Board to make a rule recognizing eight separate bargaining units in acute care hospitals and that these powers are not limited by Section 9(b)’s mandate that the Board decide appropriate bargaining units in each case.

2. The Employees at Issue are Technical Employees Within the Meaning of the Board’s Health Care Rules

During rulemaking, the Board described technical employees as those who “perform jobs involving the use of independent judgment and specialized training,” including employees who perform “medical laboratory, respiratory therapy, radiography, emergency medicine, and medical records” functions. 284 NLRB at 1553. The Board further explained that technical employees “are distinguished by the support role they play within the hospital, and by the fact they work in patient care.” *Id.* Examples of technical work include “routine clinical tests performed by medical laboratory technicians; general respiratory care administered by respiratory therapists; and x-rays, ultrasound procedures, and CAT scans performed by various technicians.” *Id.* at 1554. The Board also explained that technical employees are “either certified (usually by passing a national examination), licensed, or required to register with the appropriate state authority.” *Id.* Other factors distinguishing

technical employees from other non-professionals include separate supervision, the performance of work in laboratories away from other service employees, and a higher wage scale than non-professional employees. *Id.* at 1554-55.

The parties stipulate, and the record establishes, that the Unit is comprised of technical employees within the meaning of the Health Care Rules. The parties also stipulate, and the record establishes, that the Employer's paramedics, cardiac sonographers, and vascular technologists are likewise technical employees inasmuch as their jobs require specialized training and the exercise of independent judgment; they are required to possess special certifications or licenses; they play a support role in the providing of patient care; they are separately supervised; and they generally work in a laboratory setting. Indeed, the Board has found each of these three classifications to be properly included in a technical unit under the Board's health care rules. See *Virtua Health, Inc.*, 344 NLRB 604 (2005) (holding that paramedics are technical employees); *Middlesex General Hosp.*, 239 NLRB 837 (1978) (including vascular technicians in a unit of technical employees); *Mercy Health Services North*, 311 NLRB 1091 (1993) (including echo technologists, i.e., cardiac sonographers, in a unit of technical employees).

Thus, if this were an initial unit determination, there is little question that the paramedics, cardiac sonographers, and vascular technologists would appropriately be included in a single technical unit, together with the Employer's other technical employees, and not any of the seven other units designated in the Board's health care rules.

E. Timeliness of the Petition

In the context of a unit clarification petition, an accretion to an established bargaining unit is regarded as an addition to the unit and therefore as a part of it. *United Parcel Service*, 325 NLRB 37 (1997); *Printing Industry of Seattle, Inc.*, 202 NLRB 558 (1973). The Board has developed a number of guiding principles in accretion cases, based on its desire not to disrupt existing bargaining relationships or impose a bargaining relationship on employees without the opportunity to vote. See *Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270, 1271 (2005); *Towne Forde Sales*, 270 NLRB 311 (1984). Thus, accretion will only occur when the group to be accreted has "an overwhelming community of interest with the unit" and "little or no separate group identity," so that it cannot be considered an appropriate separate unit. *Ready Mix USA, Inc.*, 340 NLRB 946, 954 (2003); *Safeway Stores*, 256 NLRB 918 (1981). Accretion is not applicable to cases in which the group sought to be accreted would constitute a separate appropriate bargaining unit. *Passavant Health Center*, 313 NLRB 1216 (1994).

The Employer, however, contends that it is too late to file a unit clarification petition to accrete the disputed employees into the Unit, based on the principle that the Board will not, during the term of a collective-bargaining agreement, clarify a unit defined by a contract to include a position that was in existence before the contract was executed. The purpose behind this principle is similar to the principle limiting accretions, namely, the desire to avoid disruption to the parties' collective-bargaining relationship. *Monongahela Power Co.*, 198 NLRB 1183 (1972); *Wallace-Murray Corp.*, 192 NLRB 1090 (1971). The Employer argues

that allowing an accretion through a unit clarification petition here would disrupt its labor-management relationship with the Petitioner, because it would have to reopen the agreement mid-term to bargain over salaries and other terms and conditions of employment.

I find that accretion is appropriate because, notwithstanding the Employer's arguments regarding the timing of unit clarification petitions and potential for labor-management disruption, the Board's Health Care Rules require a different analysis on the issue of accretion in this case. Here, the job classifications of paramedic, cardiac sonographer, and vascular technologist existed before the effective date of the parties' current collective-bargaining agreement. As to the cardiac sonographer and vascular technologist positions, the classifications existed many years before the parties' current collective-bargaining agreement, but were created after the Unit's certification in 1989. Even though the job classifications at issue are clearly technical employees, for some unknown reason, they were neither specifically included nor excluded by the parties. In essence, these employees have been ignored.

It appears that from the time the Unit was certified, the parties have sought to establish a unit that conforms with the Board's technical employee unit. As the Employer expanded, there were further attempts to accrete all of the Employer's technical employees into the Unit, as evidenced by the record, which reflects that the original Unit has expanded from 6 to 24 job classifications. Furthermore, there is no evidence in the record that there are other technical employees employed by the Employer who are not included in the current or proposed Unit.

The record evidence establishes that the Board's strict standards for accretion are met here. Indeed, the Employer has taken the position that "[t]here is not an issue as to whether or not there is a community of interest between those existing in the Technical bargaining unit, and those that the Union wishes to accrete." The lack of any separate group identity and the overwhelming community of interest are demonstrated by the fact that the paramedics, cardiac sonographers, and vascular technologists all fall within the ambit of technical employees under the Board's Health Care Rules and cannot be included in any other unit. In addition to the community of interest factors delineated in the Health Care Rules, the record also establishes that there is some common supervision where the Director of Radiology oversees the x-ray technicians, EKG technicians, vascular technologists, and the cardiac sonographers; the pay ranges of the two groups are comparable; and the employees receive the same health insurance, combined leave, holiday pay, and retirement plan benefits.

As applied to the unique circumstances of this case, the general principles relating to the time in which a unit clarification petition may be filed must give way to the specific policy concerns under the Board's Health Care Rules. In arguing against unit clarification, it appears that the Employer would find that a question concerning representation exists, and that the only correct procedure to determine the issue of inclusion is a petition pursuant to Section 9(c) of the Act. But this is not a situation in which a self-determination election could be held for the disputed employees to decide whether they wish to be included in the Unit. It is well settled that a self-determination election can only take place if the petitioned-for employees constitute a separate appropriate unit. See *Unisys Corp.*, 354 NLRB No. 92 (2009). Under

the Health Care Rules, that is not a possibility here. If the employees voted against inclusion in the technical unit, they would then form a residual unit. Such a result is not permitted under the Board's Health Care Rules, which make it abundantly clear that, "[e]xcept in extraordinary circumstances and in circumstances in which there are existing non-conforming units,' the eight units . . . described in the Rule, and only those units, will be found appropriate for acute care hospitals." *Crittenton Hospital*, 328 NLRB 879 (1999) (emphasis added), quoting Section 103.30 of the Board's Rules and Regulations. Notably, none of the cases cited by the Employer for the proposition that the petition in this matter is untimely involve acute health care facilities or apply the Board's Health Care Rules.

A finding that the paramedics, cardiac sonographers, and vascular technologists are included in the Unit also gives effect two other important goals underlying the Board's Health Care Rules – the "encourage[ment of] collective bargaining by hospital employees" and the "avoid[ance of] the proliferation of bargaining units" in acute care hospitals. I find, therefore, that to require these employees to continue unrepresented for the foreseeable future, notwithstanding that they are technical employees and otherwise part of an existing Board unit but for an anomalous historical exclusion, would undermine the purposes of the Act.

Finally, I find that, even if the cardiac sonographers and vascular technologists could not be included in the Unit because of their historical exclusion from the Unit, there exists no similar basis to exclude the paramedics. As noted above, although the paramedic position was created about two weeks before the parties executed the current contract, the first paramedic was not actually hired until May 12, 2008, after the contract went into effect. Although the Employer argues that it discussed the creation of this position with an agent of the Petitioner during negotiations, the record is devoid of any specific evidence regarding those discussions. The record does establish, however, that the Petitioner's lead technical unit negotiator had no notice of the existence of the paramedic position until April 2009. Accordingly, the paramedic position is a newly-created position that is an appropriate subject of a unit clarification petition. See *Union Electric Company*, 217 NLRB 666, 667 (1975) ("unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement").

F. Conclusion

Based on the foregoing and the record in this proceeding, I shall clarify the Unit to include the positions of paramedic, cardiac sonographer, and vascular technologist (registered and unregistered).

ORDER

IT IS HEREBY ORDERED that the bargaining unit, made up of technical employees employed by Employer and represented by the Petitioner, shall be clarified to include the additional job classifications of paramedic, cardiac sonographer, and vascular technologist (registered and unregistered).

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C., 20570. The Board in Washington must receive this request by the close of business at 5:00 p.m. (EST) on November 12, 2009. A copy of the request for review should also be served on the undersigned. The request may be filed electronically through E-Gov on the Board's website, www.nlrb.gov,³ but may not be filed by facsimile.

Dated at Phoenix, Arizona, this 28th day of October 2009.

/s/Cornele A. Overstreet

Cornele A. Overstreet, Regional Director
National Labor Relations Board

³ To file the request for review electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlrb.gov.